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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,682	07/01/2003	Gloria Falla	PL083USQ	5335

7590

06/30/2005

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EXAMINER

HALE, GLORIA M

ART UNIT PAPER NUMBER

3765

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/611,682	<b>Applicant(s)</b> FALLA ET AL.	
	<b>Examiner</b> Gloria Hale	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 4-18-05 (Amendment and Terminal Disclaime).
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3-3-05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-7, 9, 14, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gluckin (US 5,154,659).

Gluckin discloses a method of forming an undergarment by inserting an adhesive layer 80 between first 78 and second 92 fabric layers to form a subassembly (see Gluckin, col. 3, lines 9 – 41, figure 3 and 5-11), causing the adhesive layer to form a laminate(col. 3, lines 44-51) with heat sealers 94,96 bonding in the claimed areas and removing trim from the outer periphery to form a finished, scalloped edge 109 and wherein the fabric layers include a cotton-blend material. The film of the Gluckin brassiere laminate maintains its stretchability as claimed. (See Gluckin, Abstract).

The Gluckin blank or subassembly has a periphery that is larger than “an outer periphery of the undergarment” in that the upper edge of the subassembly as seen in figure 9 is larger than the edge 109 of the undergarment as seen in figure 15. The claim does not state that the outer periphery of the undergarment is the entire outer periphery of the entire undergarment. It only claims it as being larger than “an outer periphery of the undergarment” which would be any “outer periphery” edge of the undergarment.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 15 and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin (US 5,154,659) in view of Bracht (US 2,915,067). Gluckin discloses the invention substantially as claimed including the scalloped edge. However, Gluckin does not disclose the adhesive fusible material as being a polyethylene and ethylene vinyl acetate copolymer or the specific film content percentages of polyester, cotton and spandex. Bracht discloses a fusible support material formed of polyethylene material. (See Bracht, col. 2, lines 28-37).

Accordingly it would have been obvious to modify the brassiere of Gluckin to include a polyethylene support of fusible material in order to provide support to the breasts of the wearer.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin (US 5,154,659) .

Gluckin discloses the invention substantially as claimed. However, Gluckin does not specifically disclose the exact claimed percentages of cotton, polyester and spandex materials. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassiere of Gluckin to construct it of the claimed

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specific fiber content percentages since it has been held to be within the skill of one of ordinary skill in the art to select a known material, such as a cotton, polyester and spandex blend which are commonly used in garment manufacturing and in undergarment construction and to select such a material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. It also would have been obvious to find the optimum percentage fiber content of each fiber since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. In re Boesch 617 F. 2<sup>nd</sup> 272,205 USPQ 215 (CCPA 1980).

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin in view of Butt (US 5,820,443).

Gluckin discloses the laminated brassiere structured substantially as claimed.

However, Gluckin does not specifically disclose the gore reinforcement layer between the first fabric layer and adhesive layer. Burr discloses a fabric reinforcement fabric 15 located as claimed in order to provide support at the central area of the bra.

Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassiere of Gluckin to include a central gore fabric reinforcement as disclosed by Burr in order to provide extra support at the central area of the bra. (See Burr, col. 2, lines 25-35; col. 4, lines 10-19,66 – col.5,line 39).

### ***Response to Arguments***

Applicant's arguments filed 4-18-05 have been fully considered but they are not persuasive. In regard to claims 1 and 14 applicant is arguing more that what has been

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claimed in regard to "an outer periphery of the undergarment. The entire outer periphery of the undergarment has not been claimed as discussed above in the above rejection.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gloria Hale  
Primary Examiner  
Art Unit 3765

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